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THE CANADIAN SOCIAL ECONOMY AND THE WELFARE STATE

COURSE MATERIALS*

DEBORAH COYNE

1986-87

TORONTO
FACULTY OF LAW
UNIVERSITY OF TORONTO

1986

*Many thanks to Steve Kennett for his invaluable assistance in putting together this material

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INDEX

		Page No.
I	**INTRODUCTION**	(i)
II	**PERSPECTIVES ON THE SOCIAL ECONOMY**	
	Michael Ignatieff, The Needs of Strangers, (1984), pp. 9-23, 135-42	1-13
	Robert Reich, "Toward A New Public Philosophy", The Atlantic, May 1985, pp. 68-79	14-25
	Lester C. Thurow, The Zero-Sum Society, (1980), pp. 3-25	26-37
	G. Calabresi and P. Bobbit, Tragic Choices, (1978), pp. 15-28, 195-199	38-51
	D. Coyne, "Agenda For a Social Economy" in Policy Options (July, 1986), pp. 19-23	51a-55
	David Laidler, "Economic Ideas and Social Issues: An Overview" in David Laidler (Research Coordinator), Approaches to Economic Well-Being, (1985), (Macdonald Commission Studies vol. 26), pp. 1-47	56-79
	A.G. Blomqvist, "The Welfare State and the Size of Government" in David Laidler (Research Coordinator), Approaches to Economic Well-Being, (1985), (Macdonald Commission Studies vol. 26), pp. 89-136	80-104
III	**SETTING THE SCENE FOR SOCIO-ECONOMIC CHANGE**	
	A. The Canadian Constitutional Framework	
	Claude E. Forget, "The Harmonization of Social Policy" in Mark Krasnick (Research Coordinator), Fiscal Federalism, (1986), (Macdonald Commission Studies vol.65), pp. 97-148	105-131
	Keith G. Banting, The Welfare State and Canadian Federalism, (1982), pp. 7-29, 171-181	132-151
	J. Stefan Dupré, "Reflections on the Workability of Executive Federalism" in Richard Simeon (Research Coordinator), Intergovernmental Relations,(1985), (Macdonald Commission Studies vol. 63), pp. 1-32	152-168

	Page No.
Thomas J. Courchene, Economic Management and the Division of Powers, (1986), (Macdonald Commission Studies vol. 67), pp. 101-128	169-183
Allan M. Maslove and Bohodar Rubashewsky, "Cooperation and Confrontation: The Challenges of Fiscal Federalism" in Michael J. Prince (ed) How Ottawa Spends, (1986), pp. 95-118	184-196
B. Interest Groups and the Public Policy Process	
Hugh G. Thornburn, Interest Groups in the Canadian Federal System, (1985), (Macdonald Commission Studies vol. 69) pp. 3-20, 53-81, 115-137	197-236
Mancur Olson, The Rise and Decline of Nations, (1982), pp. 17-74	237-271
R. Dobell, The Social Policy Process in Canada, Institute For Research on Public Policy, (1986), pp. 1-45	272-320
R. Dobell, "The Consultation Process: Prospects for 1987 and Beyond" in Courchene et al (eds) OEC, Ottawa and the Provinces, vol. 2 (1985), pp. 144-61	321-329
C. Recent Debates over New Directions for the Welfare State	
A.W. Johnson, "Canada's Social Security Review, 1973-75 : The Central Issues" 1 Canadian Public Policy, (Fall 1975), pp. 456-72	330-346
R. Van Loon, "Reforming Welfare In Canada" in 27 Public Policy, (1979), pp. 469-504	347-365
Macdonald Commission Report, Summary and Highlights, pp. 31-41	366-376
Social Planning Council of Metropolitan Toronto, "The Rise and Fall of the Welfare State" in Daniel Drache and Duncan Cameron (eds), The Other Macdonald Report, (1985), pp. 51-62	377-383
Jonathan R. Kesselman, "The Royal Commission's Proposals for Income Security Reform" in Canadian Public Policy, (February 1986), pp. 101-112	384-395

Page No.

Derek Hum, "UISP and the Macdonald Commission: Reform and Restraint" in Canadian Public Policy, (February 1986), pp. 92-100 — 396-404

Michael Mendelson, "Rationalization of Income Security in Canada" in Courchene et al (eds) OEC, Ottawa and the Provinces, vol. 1, (1985), pp. 229-252 — 405-417

James J. Rice, "Politics of Income Security: Historical Developments and Limits to Future Change" in G. Bruce Doern (Research Coordinator), The Politics of Economic Policy, (1985), (Macdonald Commission Studies vol. 40), pp. 221-250 — 418-433

François Vaillancourt, "Income Distribution and Economic Security in Canada: An Overview" in François Vaillancourt (Research Coordinator), Income Distribution and Economic Security in Canada, (1985), (Macdonald Commissions Studies vol. 1), pp. 1-75 — 434-471

T. Courchene, "Entitlements versus Efficiency" in Policy Options, (July 1984), pp. 16-19 — 472-475

D. Constitutional Guarantees

Henri Brun, "The Canadian Charter of Rights and Freedoms as an Instrument of Social Development" in Clare F. Beckton and A. Wayne MacKay (Research Coordinators), The Courts and the Charter, (1985), (Macdonald Commission Studies vol. 58), pp. 1-36 — 476-494

Leslie A. Pal, "Federalism, Social Policy and the Constitution" in Jacqueline S. Ismael (ed), Canadian Social Welfare Policy, (1985), pp. 1-20 — 495-505

IV Defining the Issues

A. Poverty in Canada

Bob Power, "More or Less Poor" in Policy Options, (January 1985), pp. 37-38 — 506-507

National Council of Welfare, "Fighting Poverty: The Effect of Government Policy" in Daniel Drache and Duncan Cameron (eds), The Other Macdonald Report (1985), pp. 63-79 — 508-516

Derek Hum, "The Working Poor, the Canada Assistance Plan, and Provincial Response in Income Supplementation" in Jacqueline S. Ismael (ed), Canadian Social Welfare Policy, (1985), pp. 120-138 — 517-526

Page No.

B. Unemployment in Canada

Jonathan R. Kesselman, "Less Insurance, More Jobs" in Policy Options, (May 1984), pp. 45-7 — 527-529

Ontario Public Service Employees Union, "Jobs and the New Technology" in Daniel Drache and Duncan Cameron (eds), The Other Macdonald Report, (1985), pp. 136-145 — 530-562

Leon Muszynski, "The Politics of Labour Market Policy" in G. Bruce Doern (Research Coordinator), The Politics of Economic Policy, (1985), (Macdonald Commission Studies vol. 40) pp. 251-305

INTRODUCTION

To study the subject of the Canadian social economy and the welfare state within a law school may appear at first to be somewhat unusual. Upon deeper reflection, however, it should become apparent that such a course is as appropriate as the so-called traditional "black-letter" law courses. Indeed, given the changing role of the lawyer in contemporary society, it could be argued that legal education must be increasingly oriented towards these new areas of study that integrate concerns with law, morality, society and the economy.

In a recent lecture, Harry Arthurs set out succinctly the parameters of the debate over the evolving role of lawyers, and our conceptions of "the law"[1]:

> "A considerable theoretical debate in legal-academic circle revolves around the extent to which law is a mere extension of the interests and ideologies of the dominant forces in any society, rather than an autonomous influence which shapes that society and restrains those forces. The opposition between these points of view carries over to a debate about how we should see lawyers. They are the agents of law: should we see them as defenders of the status quo and the servants of its proprietors? Or should we instead view them as the moral tutors of society with a special mandate to prescribe the procedures by which we should organize our economy, family life and political processes?"

In terms of Professor Arthur's framework, this particular study of the Canadian social economy clearly reflects the assumption that the lawyer is more than simply the defender of the status quo, and that 'the law' is not some given quantity - a dependent variable that is primarily the product of social reality. The study emphasizes that those pursuing a legal education in today's complex society should be encouraged to articulate a reasonably clear vision of the type of society and economy towards which we should be focusing our efforts, and should be prepared and equipped to use the law (whatever its manifestation) to change and alter socio-economic reality.

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1 Harry Arthurs, "The Legal Profession : Problems and Prospects", Annual Lecture Series, March 1986, mimeograph.

Obviously, this type of study will not appeal to all law students. And that is not surprising: we will always have need of the lawyers who will prefer to confine themselves to private practice and to interpreting and applying existing laws to determine the rights of their clients in a wide range of circumstances. But, given the profound and wrenching social and economic changes that have taken and continue to take place in Canada today, we have perhaps even greater need of those who can combine a knowledge of legal nuts and bolts with an ability to use that knowledge to achieve meaningful social and economic progress.

With specific reference to the study of the Canadian social economy and the welfare state, one of the first objectives of the course is to try to articulate a public philosophy that should inspire and direct any change. For example, if reform is to lead to meaningful social and economic progress, we must be clear as to our underlying value choices, and the purposes for which we seek to resort to law and, within law, to a specific legal instrument. As Liora Salter notes succinctly: "Law and policy always embody value choices. If these value choices can be made explicit, they can aid in developing a framework for some innovative policy recommendations".[2] In seeking to identify underlying value choices, consideration must be given to such questions as whether to consider law and regulation as a safety net, as affecting the quality of life, or as affecting redistribution. Consideration must also be given to contending theories of social and economic justice, and the extent to which they may inspire our value choices.

In addition to articulating a coherent public philosophy, one that reflects a set of value choices that can then better guide our reform efforts toward a variety of coherent objectives, the course will also emphasize the importance of analyzing and understanding the reform process itself. This is critical if we are to be able effectively to translate our ideas for change into reality. Considerations of the process of social

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2 Liora Salter, "Law and Values" in Bernier and Lajoie (eds) Law, Society and the Economy, Macdonald Commission Background Studies, Vol. 46, (1985).

policy reform will entail a wide range of inquiries into the structure and operation of government bureaucracies and government executives at both the federal and provincial levels; the activity of special interest groups; the intergovernmental dimension; the impact of the Charter, and so forth.

Finally, the course will focus on the possible specific components of comprehensive social policy reform. These include proposals for a guaranteed annual income, guaranteed access to universal training programs, unemployment insurance reform, the integration of our tax and transfer systems, major improvements to our education system at all levels, child care, housing reforms, changes to the structure of federal - provincial fiscal relations notably in respect of the Canada Assistance Plan and equalization payments, a comprehensive disability insurance system, and health care and pension reforms.

The consistent overall objective of the proposals in all these areas should be to seek a fundamental intellectual and structural reorientation of our social policies, and the integration of our policies for social development with policies for economic development; hence the key concept of the "social economy". We can no longer afford to implement ad hoc social policy initiatives in the absence of any consistent rationale as we have done in the past; rather, we must coordinate a renewed attack on poverty and unemployment, with initiatives that are more suited to the social and economic realities of the 1980's and that are designed to achieve greater social justice and to build up the innovative strengths of our economy.

In present circumstances, the key to both social and economic progress, to both greater social justice and improved productivity and competitiveness, is the development of our human resources - our intellectual capital. Accordingly, social security and the social safety net must be redefined in terms of the individual's capacity to be flexible, to adapt, to shift careers and to exercise choice according to changing needs at various stages of life. This necessitates new approaches to the redistribution and sharing of income and work, as well as the integration of measures designed to

provide basic social services and a basic minimum income, with our employment and human resource development strategies.

And this now brings us back full circle to the role of law and those with legal education. Any discussion of specific proposals for change, or simply the process through which to implement such change, will necessitate an understanding of both the range of legal instruments available to help us achieve our objectives (statutes, regulations, crown corporations, administrative bodies and so forth), as well as the underlying values that inspire the choice of objectives and legal instruments. In addition, a legal background will be invaluable in addressing the complex issues of constitutional law (given Canada's federal system and the new Charter of Rights and Freedoms) and administrative law (given that much of the actual implementation of policy in the social economy is delegated to tribunals, regulatory authorities and the bureaucracy in general), that will inevitably arise. It is hoped that those that participate in this study will at least come away with a fuller understanding of both existing socio-economic reality and how to use their skills as lawyers constructively to change it.